



**REQUEST FOR APPLICATIONS - RFA NO. PS07091**

**The Pre-Qualification Of Contractors To Provide SAP PS (Project Systems) And IM (Investment Management) Consulting Or Professional Services**

Purchasing Services  
2<sup>nd</sup> Floor, City Hall  
453 West 12<sup>th</sup> Avenue  
Vancouver, B.C. V5Y 1V4  
Attention: Wendy Corneau, B.Sc., Contracting Specialist

NOTES: ALL ENQUIRIES CONCERNING THIS REQUEST FOR PRE-QUALIFICATION OF CONTRACTORS TO PROVIDE SAP PS AND IM MODULE CONSULTING SERVICES SHOULD BE DIRECTED TO:

Wendy Corneau, B.Sc., Contracting Specialist  
E-mail: [purchasing@vancouver.ca](mailto:purchasing@vancouver.ca) Fax: 604-873-7057

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**THE PRE-QUALIFICATION OF CONTRACTORS TO SAP PS AND IM**  
**MODULE CONSULTING SERVICES**

The City of Vancouver now requests applications from SAP PS/IM Contractors meeting the requirements set out below to be registered on the Pre-Qualified List for SAP PS and IM module Consulting Services for the City.

Interested SAP Consulting businesses should apply to be registered by carefully reviewing, completing and then signing and delivering the attached Application Form, along with the required supporting documents.

To obtain information regarding the status of your Application Form or to arrange an appointment to review your Application Form please call the Purchasing Services office at (604) 873-7263



Purchasing Services  
2<sup>nd</sup> Floor, 453 West 12<sup>th</sup> Avenue  
Vancouver, BC, V5Y 1V4  
Tel: (604) 873-7263  
Fax: (604) 873-7057

**REQUEST FOR APPLICATIONS - RFA NO. PS07091  
APPLICATION FORM**

**APPLICATION FOR REGISTRATION ON PRE-QUALIFIED LIST FOR SAP PS  
AND IM MODULE CONSULTING SERVICES**

Applicant's Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone/Fax/E-mail: \_\_\_\_\_

Key Contact Person: \_\_\_\_\_

Incorporation Date: \_\_\_\_\_

Place of Incorporation: \_\_\_\_\_

Incorporation Number: \_\_\_\_\_

Proposed (Individual) Consultant(s): \_\_\_\_\_

1.0 DOCUMENTS WHICH MUST BE ATTACHED TO THIS APPLICATION FORM

Applicant now confirms that the Applicant has attached the following documents to this application form:

Description Confirmation  
*[Note: Applicant must attach (where applicable) photocopies of each of the following documents and then check the box indicated]*

- |                                                                                                                                                                                                                              |                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| ICBC/Liability Insurance Document for <u>all</u> vehicles that will be used on City Streets (\$2,000,000 Third Party Liability Coverage as referred to in Appendix B, Section 8.5 <i>Motor Vehicle Liability Insurance</i> ) | <input type="checkbox"/> |
| Worker's Compensation Board Proof of Coverage                                                                                                                                                                                | <input type="checkbox"/> |
| Proof of General Business Insurance (as referred to in Appendix B, Section 8.3 <i>Evidence of Insurance</i> )                                                                                                                | <input type="checkbox"/> |
| Unit Price List, Appendix C, Section 2.0                                                                                                                                                                                     | <input type="checkbox"/> |
| Contractor's Experience, Appendix C, Sections 1.0 & 3.0                                                                                                                                                                      | <input type="checkbox"/> |
| List of Subcontractors, Appendix C, Section 2.0                                                                                                                                                                              | <input type="checkbox"/> |
| Current City of Vancouver Business License (if applicable)                                                                                                                                                                   | <input type="checkbox"/> |
| Insurance Certificate completed with the City of Vancouver named as an additional insured                                                                                                                                    | <input type="checkbox"/> |

2.0 APPLICANT'S SIGNATURE AND LEGAL AGREEMENT

Applicant now submits this Application Form and agrees to be legally bound by the terms and conditions of this Request for Application as set out in Appendix A - *Legal Terms and Conditions of the RFA*, and agrees also that if this Application Form is approved by the City the Applicant will be placed on the Pre-Qualified List, and for so long as the Applicant remains on the Pre-Qualified List, the Applicant may be asked to provide Service and if the Applicant agrees at any time or from time to time to provide Service, such Service will be provided pursuant to the terms and conditions of Appendix B - *SAP PS and IM Module Consulting Services Contract* and the Applicant now agrees to be legally bound to comply with the terms of such contract as though one such contract was separately signed for each and every project to which the Applicant responds to a request to provide Service.

The Applicant acknowledges that this is a legally binding document and that the City has advised the Applicant to obtain legal advice prior to signing this document.

\_\_\_\_\_  
Legal Name of Applicant

\_\_\_\_\_  
Authorized Signature of Applicant

Date: \_\_\_\_\_

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**REGISTRATION ON PRE-QUALIFIED LIST**

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**1.0 DEFINITIONS**

In this Request for Applications, the following terms have the following meanings:

- (a) "Applicant" means the business entity signing and delivering this Application Form and applicant means any other applicant responding to this Request for Applications and in each case offering to become a contractor ("Contractor") pursuant to Appendix B - *SAP PS and IM Module Consulting Services Contract*
- (b) "Application Form" means this application form and all of its attachments as submitted by the Applicant in response to this RFA, and in the appropriate contexts, includes Application Forms submitted by other applicants.
- (c) "City" means the City of Vancouver;
- (d) "Losses" means, in respect of any matter, all
  - (i) direct and indirect, as well as
  - (ii) consequentiallosses, damages, liabilities, deficiencies, costs and expenses (including without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement, whether from a third person or otherwise).
- (e) "Pre-Qualified List" means the register(s) kept by the SAP Project Manager for determining the status of Applicants who have responded to this RFA and who have responded from time to time to requests by the City for Service pursuant to the SAP PS and IM Module Consulting Services Contract.
- (f) "Request for Applications" or "RFA" means this request for applications and the application, evaluation, approval, rejection and all other aspects of the application, registration and termination of registration contemplated by this request for applications, including without limitation and by way of example only, the placing of the Applicant on the Pre-Qualified List, the position on the Pre-Qualified List which the City places the Applicant from time to time, and the removal of the Applicant from the Pre-Qualified List by the City for any reason, including without limitation breaches of the terms and conditions set out in this RFA.
- (g) "Service" or "SAP PS and IM Module Consulting Services" means the services provided by an Applicant then registered on the Pre-Qualified List in response to the City's request for service pursuant to the SAP PS and IM Module Consulting Services Contract.
- (h) "SAP PS and IM Module Consulting Services Contract" means each separate and individual agreement formed for each project for which the City requests Service from an Applicant and the Applicant elects to provide Service on the terms and conditions set out in Appendix B - *SAP PS and IM Consulting Services Contract*.
- (i) "SAP Project Manager" and "SAP Team Lead" refer to employees of the City having those titles and includes employees acting as assistants, deputies or other authorized delegates of those personnel.



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**2.0 NO LEGAL OBLIGATION ASSUMED BY CITY**

Despite any other term of this RFA, the City has no legal duty or obligation to the Applicant in respect of this RFA, unless and until the City requests Service from the Applicant for any given project and the Applicant elects to provide Service (and then only those duties and obligations which are expressed in the SAP PS and IM Module Consulting Services Contract and only for the contract formed in respect of the Services provided for that project).

**3.0 EVALUATION OF APPLICATION FORMS/ADMINISTRATION OF PRE-QUALIFIED LIST**

**3.1 Pre-Qualified List Policy - Subject to Change**

Without any way limiting the scope of the legal terms and conditions set out in this RFA, this Clause 3.0 sets out the City's current policies and procedures with respect to making requests for SAP PS and IM Module Consulting Services and registering Applicants on the Pre-Qualified List. However, these policies and procedures are set out for convenience of reference only, are not legally binding on the City, do not form or give rise to legal rights or obligations on the part of the City or the Applicant, and may be unilaterally changed with or without notice by the City at any time and from time to time in the sole discretion of the City in order to meet any changes in the City's operational needs or to respond to market or other changes affecting the supply and demand for the Service.

**3.2 Maintenance of Pre-Qualified List**

The SAP Project Manager will maintain the Pre-Qualified List and may, at the SAP Project Manager's option add, remove, and alter the relative positions of each Applicant in accordance with the response times, availability, service quality and any other relevant performance ratings made of any given applicant by the SAP Project Manager.

**3.3 Pre-Qualified List Used as Basis for Requests for Service**

Applicants registered on the Pre-Qualified List will be requested to provide SAP PS and IM Module Consulting Services as operationally required by the City, and not always in accordance with their ratings on the Pre-Qualified List.

**3.4 This Clause 3.0 - General Guidance Only - Not Part of Legal Terms and Conditions**

As set out in Clause 3.1 above, no part of this Clause 3.0 will create any legal rights or obligations and the whole of this Clause 3.0 is completely subject to and governed entirely by the other terms and conditions of this Appendix A.

**4.0 LEGAL TERMS AND CONDITIONS OF APPLICATION PROCESS**

**4.1 Compliance/Non-Compliance**

Any Application Form which contains an error, omission or misstatement, which contains qualifying conditions, which does not fully address all of the requirements or expectations of this RFA or, which otherwise fails to conform to this RFA may or may not be rejected by the City at the City's sole discretion. Accordingly, the City may at its own discretion waive any non-compliance with the RFA, or any of its requirements or expectations including the timing of delivery or any other aspect of the RFA and may at its own discretion elect to retain for consideration Application Forms which are non-

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conforming, which do not contain the content or form required by the RFA or because they have not complied with the process for submission set out in this RFA.

**4.2 Late Application Forms (If Applicable)**

Application Forms received after the Closing Time (if applicable to this RFA) or in locations other than the address indicated, may or may not be considered or reviewed by the City and may or may not be returned unopened.

**4.3 Reservation of Complete Control Over Process**

The City reserves the right to retain complete control over the RFA process at all times. Accordingly, the Applicant's Application Form or any other Application Form from any other applicant need not necessarily be reviewed or considered or evaluated and need not necessarily be reviewed, considered or evaluated in accordance with the policies and procedures set out in this RFA and the City reserves the right to

- (a) continue, interrupt, cease or modify its review, evaluation, negotiation, ranking and registration process on the Pre-Qualified List and any or all Application Forms,
- (b) modify the City's policies and procedures regarding the Pre-Qualified List, cancel the use of the Pre-Qualified List entirely and adopt a different out-sourcing or own forces approach to obtaining the Service,

at any time without further explanation or notification to any of the applicants subject only and always to the express legal terms and conditions set out in Clauses 2.0, and 4.0 through 11.0 of this Appendix A.

**5.0 DISCUSSIONS/NEGOTIATIONS**

The City may at any time prior to requesting Service from any Applicant, discuss/negotiate changes to the scope of the RFA, modify the terms of the SAP PS and IM Module Consulting Services Contract, or any of the terms or conditions of this RFA or the SAP PS and IM module Consulting Services Contract with any one or more of the applicants without having any duty or obligation to advise the Applicant or to allow the Applicant to vary its Application Form or the SAP PS and IM Module Consulting Services Contract as a result of discussions or negotiations with other applicants or changes to this RFA or the SAP PS and IM Consulting Services Contract, and, without limiting the general scope of Clauses 2.0 and 6.0 through 9.0 of this Appendix A, and by way of example only, the City will have no liability to any Applicant as a result of such discussions, negotiations or changes.

**6.0 LEGAL RIGHTS AND OBLIGATIONS ARISING FROM RFA RESTRICTED IN SCOPE**

**6.1 Scope is Expressly Set out in Clauses 2.0, and 4.0 through 11.0**

Despite any other term, expressed or implied, of this RFA, the City and Applicant agree that all of their respective rights and obligations at law and in equity, in contract and in tort, in all matters relating to this RFA will be absolutely and unconditionally subject to Clause 2.0, and Clauses 4.0 through 11.0 of this Appendix A.

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**6.2 No Duty**

The City has no legally enforceable duty or obligation to the Applicant except in the circumstances and except to the restricted extent set out in Clauses 9.0 and 10.0 of this Appendix A.

**6.3 Applicant's Risk**

The Applicant acknowledges that the City is a public body required by law to act in the public interest to fulfil the operational requirements for the efficient management of the City's municipal infrastructure. Accordingly, in no event does the City owe to the Applicant (as opposed to the public)

(a) a contract or tort law duty of care, fairness, impartiality or procedural fairness in the RFA process, or

(b) any contract or tort law duty to preserve the integrity of the RFA process,

and the Applicant now waives and releases the City from all such duties and expressly assumes the risk of all Losses arising from participating in this RFA on this basis.

**6.4 Applicant's Cost**

The Applicant now assumes and agrees to bear all costs and expenses incurred by the Applicant in preparing this Application Form and participating in this RFA process.

**7.0 RELEASE**

The Applicant now releases the City from all liability for any and all Losses in respect of

(a) any alleged or actual breach by the City of this RFA (it being acknowledged and agreed that to the best of the parties knowledge, the City has no obligation or duty under this RFA which it could breach (other than wholly unanticipated obligations or duties which are then subsequently alleged or imposed)),

(b) any unintentional tort of the City occurring in the course of conducting this RFA,

(c) the Applicant preparing and submitting the Application Form,

(d) The City accepting or rejecting the Application Form or any other submission, placing or failing to place an Applicant on the Pre-Qualified List, placing or failing to place an Applicant on a certain position on the Pre-Qualified List, removing or failing to remove an Applicant from the Pre-Qualified List,

(e) the manner in which the City

(i) reviews, considers, evaluates or negotiates any Application Form, or SAP PS and IM Consulting Services Contract,

(ii) deals with or fails to deal with any applicant or Application Form,

(iii) decides to place, rate, position or remove or not place, rate, position or remove an applicant on or from the Pre-Qualified List,

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- (iv) administers the Application Forms, Pre-Qualified List and Applicant(s) in respect to the Pre-Qualified List, or
- (v) decides to cancel the use of the Pre-Qualified List and adopt an alternative form of obtaining the SAP PS and IM Module Consulting Services, whether by public tender, use of City employees, or otherwise, or
- (f) the Applicant(s), if any, whom the City places, rates, positions, removes or fails to place, rate, position or remove on or from the Pre-Qualified List.

**8.0 INDEMNITY**

The Applicant now indemnifies and will protect and save the City harmless from and against all Losses, in respect of any claim or threatened claim by the Applicant or any of its employees, subcontractors or agents alleging or pleading

- (a) any alleged or actual breach by the City or its officials or employees of this RFA (it being agreed that, to the best of the parties' knowledge, the City has no obligation or duty under this RFA which it could breach (other than wholly unanticipated obligations or duties subsequently alleged or imposed)),
- (b) any unintentional tort of the City or its officials or employees occurring in the course of conducting this RFA, or
- (c) liability on any other basis related to this RFA.

**9.0 LIMITATION**

In the event that, with respect to anything relating to this RFA, the City or its officials or employees are found to have breached any duty or obligation of any kind to the Applicant or its employees, subcontractors or agents whether at law or in equity or in contract or in tort, or are found liable to the Applicant or its employees, subcontractors or agents on any basis or legal principle of any kind, the City's liability is limited to a maximum of \$100, despite any other term or agreement to the contrary.

**10.0 DISPUTE RESOLUTION**

**10.1 Commercial Arbitration**

Any dispute relating in any manner to this RFA, excepting only any disputes arising between the City and any Contractor in respect to any Service requested by the City and provided by the Contractor pursuant to a SAP PS and IM Module Consulting Services Contract, will be resolved by arbitration in accordance with the *Commercial Arbitration Act* (British Columbia) amended as follows:

- (a) The arbitrator will be selected by the City's Director of Legal Services.
- (b) Clause 2.0, and Clauses 4.0 through 11.0 of this Appendix A will:
  - (i) bind the City, Applicant and the arbitrator, and
  - (ii) survive any and all awards made by the arbitrator.
- (c) The Applicant will bear all costs of the arbitration.

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(d) The Arbitration will be held in the City of Vancouver.

**10.2 British Columbia Law Governs**

The laws of British Columbia will apply to this RFA and subject always to Clause 10.1, the City and Applicant now irrevocably submit to the exclusive jurisdiction of the courts of British Columbia.

**10.3 Entire Agreement**

The provisions of this RFA constitute the entire agreement between the parties with respect to all matters arising from or relating to this RFA and the Pre-Qualified List. No amendments to the legally binding portions of this RFA will be binding on the City or the Applicant unless the same are agreed to in writing by both the City and the Applicant.

**11.0 RFA IS CITY PROPERTY/APPLICATION FORM BECOMES CITY PROPERTY**

This RFA is proprietary to the City and copyright and all related intellectual property rights in and to this RFA are and will remain vested in the City at all times. Any and all documentation submitted by the Applicant in response to this RFA, once submitted to the City, becomes the property of the City, and the City is under no obligation to return the Application Form or any supporting documentation to the Applicant.

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APPENDIX B - PROFESSIONAL SERVICES AGREEMENT

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CITY OF VANCOUVER  
CONSULTING SERVICES FOR THE CITY OF VANCOUVER  
SAP PS/IM IMPLEMENTATION PROJECT

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007

BETWEEN:

CITY OF VANCOUVER  
453 West 12th Avenue  
Vancouver, British Columbia  
V5Y 1V4

(the "City")

OF THE FIRST PART

AND:

[APPLICANT NAMED IN SERVICE REQUEST]

(the "Contractor")

OF THE SECOND PART

BACKGROUND:

- A. By way of Request for Applications No. PS07091 (the "RFA"), the City requested applications from pre-qualified firms for the provision of Professional Services for the implementation of SAP modules on a request for service basis.
- B. In response to the RFA, the Contractor submitted a detailed application (the "RFA Application").
- C. After evaluating the Contractor's and other Applicants' applications, the City has entered the Contractor on the Pre-Qualified List.

The City and the Contractor have agreed that the following terms and conditions will apply to any service request ("Service Request") issued to the Contractor by the City and accepted by the Contractor within the period set out in the Service Request.

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APPENDIX B - PROFESSIONAL SERVICES AGREEMENT

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D. THE CITY AND CONTRACTOR NOW AGREE AS FOLLOWS:

1.0 INTERPRETATION

1.1 The following words and terms, unless the context otherwise requires, have the meanings set out below:

“**Affiliated Organizations**” means any legal entity or unincorporated association falling within any of the following categories:

- (a) non-profit corporations or unincorporated associations to whom substantial funding or subsidies are provided by the City,
- (b) any Affiliate of the City which provides services authorized or required by the *Vancouver Charter*,
- (c) governmental authorities to whom the City is required to provide administrative services as a result of provincial legislation mandating or authorizing the provision of such services.

“**Agreement**” means the agreement between the City and the Contractor. Formed by the issuance of a Service Request and the acceptance of same by the Contractor within the period set out in the Service Request.

“**Applicant’s Information**” means the document in the form attached as Appendix “C” as completed and submitted by the Applicant to the City.

“**Business Day**” means a weekday (Monday to Friday) that is not a “holiday” as defined in the *Interpretation Act* of British Columbia.

“**City’s Project Manager**” means the City’s employee, or his or her delegate, who is authorized in writing to deal with the Contractor on behalf of the City in connection with the goods or services to be provided by the Contractor, or to make decisions in connection with the Contract Documents.

“**Contract Documents**” means this Professional Services Agreement, the Service Request, the Contractor’s RFA Application, the RFA and such other documents as may be listed in Service Request, including all amendments or addenda agreed between the parties.

“**Contractor**” means Applicant who is issued a Service Request and accepts same within the period of time set out in the Service Request.

“**Deliverables**” means each component of the services to be provided by the Contractor, as further defined in The applicable Service Request.

“**Laws and Regulations**” has the meaning set out in Section 2.4.

“**Material**” has the meaning set out in Section 17.1 (a).

“**mySAP Software**” means the software licensed by SAP Canada Inc. to the City pursuant to the mySAP Software License.

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“mySAP Software License” means the agreement dated November 7, 1997 between the City and SAP Canada Inc. pursuant to which SAP Canada Inc. licensed its mySAP Software (including all SAP Releases and SAP Versions as those terms are defined in the mySAP Software License) to the City and its Affiliated Organizations.

“Project Schedule” has the meaning set out in Section 2.2.2.

“Project Team” has the meaning set out in Section 2.2.3.

“Proprietary Information” has the meaning set out in Section 17.3 (a).

“Services” has the meaning set out in Section 2.1.

“Service Request” has the meaning set out in the “Background” section above.

“Term” means the term of this Agreement as specified in Section 12.

“WorkSafe BC OH&S Regulation” means the *Workers Compensation Act* (British Columbia), including without limitation, the Occupational Health & Safety Regulation (British Columbia Regulation 296/97, as amended by British Columbia Regulation 185/9) enacted pursuant to such Act, including all amendments to or re-enactments of such Act or Regulations from time to time.

1.2 The terms and conditions of this Agreement including all Appendices are complementary and what is called for by one will be as binding as if called for by all. In the event of any conflict or inconsistency between or among any of the terms and conditions of this Agreement, such terms and conditions will take precedence and govern in the following order of priority, from highest to lowest:

- 1.2.1 the Service Request;
- 1.2.2 this Professional Services Agreement;
- 1.2.3 the Applicant’s Information; and
- 1.2.4 the RFA (excluding Service Request, PSA and Applicant’s Information).

1.3 The section headings used in this Agreement are for convenience of reference only and do not affect its interpretation.

**2.0 CONTRACTOR'S SERVICES TO THE CITY**

2.1 The Contractor will provide and be fully responsible for the following services (collectively, the "Services") as described in the Service Request.

2.2 The Contractor will be fully responsible for:

- 2.2.1 taking all steps required in placing, effecting and maintaining insurance and providing evidence of insurance as set out in Section 8.0 - *Insurance*;
- 2.2.2 adhering to the project schedule and deliverable deadlines for the Services as described in the Service Request (the “Project Schedule”);
- 2.2.3 utilizing those individuals (“Project Team members”) named in the Service Request;



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- 2.2.4 scheduling, requesting and maintaining the stated requirements and resources to be provided by the City in order to facilitate the Contractor's performance of the Services as described in the Service Request (the "City Resources").
- 2.3 The Contractor represents and warrants to the City that the Contractor possesses the necessary skills, knowledge, qualifications and experience to perform the Services to the satisfaction of the City.
- 2.4 The Contractor will perform the Services: (a) with that degree of care, skill and diligence normally applied in the performance of services of a similar nature and magnitude to those contemplated by this Agreement at the time and place the Services are rendered; (b) in accordance with sound current professional practices and design standards; and (c) in conformance with any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, and courts having jurisdiction (collectively, "Laws and Regulations") applicable at the time of design.
- 2.5 The Contractor will commence the Services promptly and will use every reasonable endeavour to carry out the Services in such a manner so as to fulfil the completion dates (a) set out in this Agreement, (b) the Project Schedule (as defined in Section 2.2 above), and (c) where no such dates are set out in this Agreement, such completion dates as are reasonably specified from time to time by the City.
- 2.6 The Contractor agrees that in the event the Contractor does not complete the Services to the satisfaction of the City during the term of this Agreement, the Contractor will spend such additional time (at its own expense) as is reasonably required to complete the Services.
- 2.7 The Contractor will not permit, do or cause anything to be done at any time which will allow any lien, certificate of pending litigation, judgment or certificate of any court or any mortgage charge, conditional sale agreement, personal property security interest or encumbrance of any nature to be imposed or to remain on title to the Work Site or to the Contractor's personal property within this Work Site.

**3.0 PROJECT TEAM/MANAGEMENT**

- 3.1 Subject to Section 3.2 below, the Contractor will utilize only the Project Team members named in the Service Request.
- 3.2 Except for substitutions required by circumstances not within its reasonable control, the Contractor may not make substitutions of Project Team members without the prior written consent of the City, whose consent will not be unreasonably withheld, delayed or conditioned.
- 3.3 For the purposes of this Section, "substitutions required by circumstances not within its reasonable control" means substitutions required by virtue of illness, death, injury, pregnancy, medical leave, or termination of employment or contract, but expressly excludes situations where the Project Team member is called upon to perform services for another client of the Contractor or its affiliates.

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- 3.4 The City may, with stated reasons and acting reasonably, request that the Contractor replace a Project Team member. The Contractor will, subject to scheduling and staffing considerations, make commercially reasonable efforts to replace the individual with someone of substantially similar competency and experience.
- 3.5 Regardless of whether or not the City consents to a substitution, or requests a substitution, the City will not be liable to pay additional compensation to the Contractor for any replacement Project Team member.

**4.0 SUB-CONTRACTORS**

- 4.1 Except as expressly permitted pursuant to Section 3.0 above, the Contractor confirms that it does not intend to utilize any sub-contractors or sub-Contractors for the performance of any part of the Services, except for the individual Project Team members named in the Contractor's Proposal, who may be retained by the Contractor on an independent or dependent contractor basis (the "Sub-Contractors") rather than a contract of employment basis.
- 4.2 Except as expressly permitted pursuant to Section 3.0 above, the Contractor may not engage sub-contractors or sub-Contractors for the performance of any part of the Services, unless the Contractor has first obtained the written consent of the City, which consent may be arbitrarily withheld.
- 4.3 The Contractor will administer, coordinate, and manage all Services provided by any Sub-Contractors, and will assume full responsibility to the City for all work performed by the Sub-Contractors in relation to the Services and will pay all fees and disbursements of all Sub-Contractors, subject to reimbursement by the City where the City has expressly agreed in this Agreement that such reimbursement is to be separate from and additional to the fees and disbursements payable to the Contractor.
- 4.4 Where a Sub-Contractor is used by the Contractor under this Agreement, the Contractor will legally bind the Sub-Contractor to comply with this Agreement.
- 4.5 Nothing in this Agreement will create any contractual relationship between a Sub-Contractor and the City.

**5.0 BASIS OF PAYMENT TO THE CONTRACTOR**

- 5.1 In consideration of the Services performed by the Contractor to the satisfaction of the City and in strict conformity with the terms of this Agreement, the City will pay the Contractor the fees and reimbursable expenses set out in this Agreement, plus the Goods and Services Tax as applicable.
- 5.2 Subject to the other terms of this Agreement, payment to the Contractor will be based on:
  - 5.2.1 hours worked by the Project Team members in providing the Services multiplied by the hourly charge-out rates set out in Applicant's Information, and
  - 5.2.2 the direct out-of-pocket expenses necessarily incurred in providing the Services and expressly permitted to be charged separately under this Agreement.

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- 5.3 Subject to the maximum liability of the City as expressly stated in the Service Request, disbursements for which the City will reimburse the Contractor will be limited to the following:

Transportation costs, including travel time, and accommodation for all the Project Team members to meetings requested by the City at locations other than the Contractor's offices to a maximum of \$0.41 per kilometre.

5.3.1 Long distance telephone calls, telegrams and telex.

5.3.2 Photocopies to a maximum of \$0.20 per page.

5.3.3 Delivery of correspondence by courier, where this method of delivery has been requested by the City.

Reimbursement of these expenses by the City will be at actual cost without any addition for overhead or profit.

All other expenses not listed above are now deemed to be expressly included in the Contractor's fees.

- 5.4 If the Contractor has engaged Sub-Contractor(s) pursuant to Sections 3.0 and 4.0 above, then the Contractor will make full payment to those Sub-Contractor(s) for work performed in relation to the Services.

- 5.5 Where the City and Contractor have expressly stated in the Service Request (or by subsequent written agreement or amendment to the Service Request) that certain Services to be performed by a Sub-Contractor are to be paid for separately from the other Services, the City will reimburse the Contractor for payments made to such Sub-Contractor(s) at amounts equal to the actual payments made to that Sub-Contractor by the Contractor without any additions for overhead and profit.

- 5.6 The Contractor will submit invoices to the City on or before the 10th day of each month. Each invoice will list the names, hours worked and pay rates of all Project Team members that have provided services for each Deliverable that month, the total amount of previous payments made by the City for that Deliverable, and the percentage completion for each Deliverable. Each invoice will show separately the applicable amount of the Goods and Services Tax and the Provincial Sales Tax.

Attached to each invoice will be copies of: (a) invoices for all disbursements claimed categorized according to Deliverable; (b) confirmation of payments made to Sub-Contractor(s) for the previous month for each Deliverable; and a brief report detailing work completed to date, work completed during the month covered by the invoice and work outstanding to complete each Deliverable.

The City will pay the Contractor on a time and materials basis, as discussed above, up to 90% of the maximum budget for each Deliverable, with the final 10% paid once all deliverables are received, reviewed and approved by the City's Project Manager.

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- 5.7 If the City does not approve of or wishes to further review, audit or otherwise seek clarification concerning the Contractor's invoices, for whatever reason, the City will not be liable for interest charges in respect of that invoice for the period from the date the invoice is submitted until the date that the invoice is paid, provided however, the City will use reasonable efforts to have the review, audit or clarification resolved within a 60 day period. The City will, if it approves the amount of such invoices, cause the respective invoices to be paid within 30 days of approval.
- 5.8 The Contractor will keep proper accounts and records of all costs and expenditures forming the basis of any billing to the City, including but not limited to hours worked, details of all disbursements and percentage amounts of work completed. All such accounts and records will not be disposed of by the Contractor without the prior written consent of the City. The City will be entitled to verify the accuracy and validity of all billings and payments made by auditing and taking extracts from the books and records of the Contractor and by such other means as will be reasonably necessary or advisable.

**6.0 CHANGES TO SCOPE OF SERVICES**

- 6.1 The City's Project Manager may, from time to time and at any time on prior written notice to the Contractor, vary the scope of Services to be provided by the Contractor. In that case and where this Agreement contains a delivery date(s) and/or limit(s) as to the maximum fees and disbursements to be paid to the Contractor as expressly stated in the Service Request for all or any part of the Services, such delivery date(s) and/or limit(s) will be adjusted as agreed to by both parties in writing, and failing agreement, as reasonably determined by the City's Project Manager.
- 6.2 Should the Contractor consider that any request or instruction from the City's Project Manager constitutes a change in the scope of Services, the Contractor shall so advise the City's Project Manager within ten days (in writing) of such request or instruction. Without said written advice within the time period specified, the City will not be obligated to make any payments of additional fees, disbursements or out of pocket expenses to the Contractor.

**7.0 RELEASE AND INDEMNIFICATION**

- 7.1 The Contractor now releases the City, its officers, employees and agents from all costs, losses, damages and expenses, including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Contractor, Sub-Contractors, and their respective officers, employees and agents in connection with their performance of the Services under this Agreement.
- 7.2 In undertaking the Services, the Contractor acknowledges that the Contractor has inspected the site, agrees to accept the site "as-is" and undertakes to take all precautions necessary to ensure the safety of all persons employed or contracted by the Contractor to perform the Services.

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- 7.3 Despite the provision of insurance coverage by the City, the Contractor hereby agrees to indemnify and save harmless the City, its successors, assigns and authorized representatives and each of them from and against losses, claims, damages, actions, and causes of actions (collectively referred to as "Claims") that the City may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Contractor, Sub-Contractors, or their respective officers, employees or agents under this Agreement excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or negligent acts of the City or its officers, employees or agents.
- 7.4 This indemnity will not affect or prejudice the City from exercising any other rights that may be available to it at law.
- 7.5 The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.

**8.0 INSURANCE**

**8.1 General**

- (a) Required Coverage - The Contractor will comply at all times with the insurance provisions set out in this Professional Services Agreement - Appendix B.
- (b) Limitations - The requirements set out in this Appendix B do not limit any insurance requirements imposed on the Contractor by municipal, provincial or federal law.
- (c) Additional Coverage - It will be the sole responsibility of the Contractor to determine what additional insurance coverage, if any, is necessary or advisable for the Contractor's own protection and/or to fulfill the Contractor's obligations under this Agreement. Any additional insurance will be provided and maintained by the Contractor at its own expense.

**8.2 Requirements for All Policies**

- (a) Minimum Limits - Without limiting any of its obligations or liabilities under this Agreement, the Contractor and its Sub-Contractors and subcontractors will obtain and continuously carry during the Term of this Agreement, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.
- (b) Premiums - The Contractor will pay all premiums and deductible costs for all insurance required to be effected under this Agreement provided always that under no circumstances does the payment of such premiums give the Contractor any interest in the proceeds of such insurance or any control over such policies as they relate to the City's interests.
- (c) Insurers - All policies must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of *Best Rating Guide on Property and Casualty Insurance Companies*.

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- (d) Form of Policy - All insurance policies must be in a form acceptable to the City's Director of Risk Management. Self-funded, policy fronting or other non-risk transfer insurance mechanisms are not permitted.
- (e) Notice to City - All insurance policies must provide the City with 30 days' prior written notice of material change, lapse or cancellation. The policy must provide that the notice will identify the Contract title, number, policy holder, and be delivered in accordance with Section 18.0 - *Notices* of this Agreement.
- (f) Insurance Obligations Separate - Neither the providing of insurance by the Contractor in accordance with this Agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Contractor from any other provisions of this Agreement with respect to the liability of the Contractor or otherwise.
- (g) Primary Coverage - The insurance coverage will be primary insurance in respect to the City. Any insurance or self-insurance maintained by or on behalf of the City, its officers, officials, employees or agents will be excess to the insurance effected by the Contractor under this Agreement and will not contribute with it.
- (h) Properly Disclose - The Contractor will properly disclose all risks in each insurance application, ensure that it does not violate or void any policy and will otherwise comply at all times with the requirements of the insurers and underwriters.
- (i) Failure to Provide - If at any time the Contractor fails to provide a certificate of insurance or certified copies of all insurance policies as required in Section 8.3 - *Evidence of Insurance*, the City may (but is not obligated to or liable for the manner in which it does so) effect such insurance on behalf of the Contractor and the cost of doing so will be paid by the Contractor to the City upon request and, in any event, within five (5) calendar days of such a request.

**8.3 Evidence of Insurance**

- (a) Proof of Insurance - Prior to commencement of this Agreement, the Contractor will provide the City with evidence of all required insurance to be taken out in the form of a detailed Certificate of Insurance attached as Appendix E supported by a certified copy(ies) of the policy(ies). The certificate of insurance must identify the Contract Title, number, policy holder and contract subject-matter, and must not contain any disclaimer. Proof of insurance, in the form of a certificate of insurance or certified copies of all insurance policies, will be made available to the City's Director of Risk Management at any time upon request.
- (b) Cause Sub-Contractors to Carry - The Contractor will ensure that those Sub-Contractors of the Contractor named in the Service Request will place and maintain the same type of Professional Liability (Errors and Omissions) insurance, and for the same period of time, as is required of the Contractor, except that the policy limits must be no less than the amounts indicated in the Service Request for each respective Sub-Contractor.

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Upon request, the Contractor will deposit with the City's Director of Risk Management detailed certificates of insurance for the policies it has obtained from its Sub-Contractors and a copy of the insurance-related clauses from those agreements. For further certainty, the above requirements will apply to all replacement and substitution Sub-Contractors.

**8.4 Commercial General Liability ("CGL") Insurance**

- (a) Must Carry CGL - The Contractor will maintain insurance in sufficient amounts and description to protect the Contractor, its Sub-Contractors, the City and their respective officers, officials, employees and agents against claims for damages, personal injury including death, bodily injury and property damage which may arise under this Agreement.
- (b) \$2,000,000 - The limit of commercial general liability insurance must be not less than \$2,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.
- (c) Form of Policy - The policy of insurance will:
- i. be on an occurrence form,
  - ii. add the City and its officials, officers, employees and agents as additional insureds,
  - iii. contain a cross-liability or severability of interests clause,
  - iv. extend to cover non-owned automobiles, contingent employer's liability, blanket contractual liability, contractor's protective liability, broad form property damage, broad form completed operations and operations of attached machinery, and
  - v. have a policy deductible not exceeding two thousand five hundred dollars (\$2,500) for any one accident or occurrence.
- (d) Primary Insurance
- Pursuant to Section 8.2(g) - *Primary Coverage*, the Contractor's commercial general policy will be primary insurance in respect to the City.

**8.5 Motor Vehicle Liability Insurance**

The Contractor will maintain motor vehicle liability insurance for owned and leased or licensed vehicles with limits of \$2,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Whether or not the policy has been issued pursuant to a government operated automobile insurance system, the Contractor will provide the City's Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Contractor and its permitted Sub-Contractors used in connection with this Agreement.

**8.6 Professional Liability (Errors and Omissions) Insurance**

- (a) Form of Coverage - A Professional Liability Insurance policy will be arranged and maintained in full force by the Contractor for the Term of this Agreement and for a further period of two (2) years following expiry of the Term. The

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policy must protect the Contractor and its officers, officials, employees and agents performing services for and on behalf of the Contractor against all liability resulting from an error, omission or negligent act in the provision of the Services under this Agreement.

- (b) \$1,000,000 - The limit of this policy must be no less than \$1,000,000 per claim, and \$2,000,000 annual aggregate.
- (c) Deductible - The policy will provide for a limit of deductibility of not greater than \$50,000.
- (d) Project Specific - The insurance coverage provided by the policy may be "Project Specific".

**8.7 Property Insurance**

- (a) Form of Coverage - The Contractor will maintain an All-Risks insurance policy covering the Contractor's property of every description.
- (b) Waiver of Subrogation - The policy must contain a provision in which the insurer waives all rights which it may acquire by payment of a claim to recover the paid amount from the City or its officers, officials, employees or agents (a "Waiver of Subrogation").
- (c) All Property Insurance Must Contain Waiver - All property insurance policies of any kind carried by the Contractor must contain a Waiver of Subrogation in favour of the City (whether or not such property insurance is carried as a requirement of this Agreement).

**9.0 WORKSAFE BC**

- 9.1 The Contractor agrees that it shall procure in British Columbia and carry and pay for, full WorkSafe BC coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject of this Agreement. The Contractor agrees that the City has the unfettered right to set off the amount of the unpaid premiums and assessments for such WorkSafe BC coverage against any monies owing by the City to the Contractor. The City shall have the right to withhold payment under this Agreement until WorkSafe BC premiums, assessments or penalties in respect of work done or service performed in fulfilling this Agreement have been paid in full.
- 9.2 The Contractor shall provide the City with the Contractor's WorkSafe BC registration number and a letter from WorkSafe BC confirming that the Contractor is registered in good standing with WorkSafe BC and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement. The Contractor shall indemnify the City and hold harmless the City from all manner of claims, demands, costs, losses, penalties and proceedings arising out of or in any way related to unpaid WorkSafe BC assessments owing from any person or corporation engaged in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of WorkSafe BC, including penalties levied by the WorkSafe BC.
- 9.3 With respect to any and all Services provided by the Contractor or its sub-Contractors/subcontractors at the City's site(s), the Contractor is now appointed and



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now accepts appointment as the “prime contractor”, as defined by the *Workers Compensation Act* (British Columbia) and its associated regulations (the “WorkSafe BC OHS Regulation”), for the purposes of this Agreement, but only with respect to the Contractor’s and its sub-Contractors’/subcontractors’ employees, contractors and agents, and only with respect to the WorkSafe BC OHS Regulation that applies to their conduct independently of the City’s compliance with the WorkSafe BC OHS Regulation that applies to the condition or contents of the City’s site(s).

**10.0 CITY INFORMATION/APPROVALS**

- 10.1 The City acknowledges that the Contractor’s ability to provide the Services in accordance with this Agreement will be dependent on the City providing the City Resources in a prompt and timely manner as reasonably required by the Contractor. To the extent that the City fails to provide the City Resources, the Contractor will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will this delay or failure to provide City Resources constitute a breach of this Agreement by the City, nor will the Contractor be entitled to extra compensation for same.
- 10.2 No reviews, approvals or inspections carried out or information supplied by the City Resources will derogate from the duties and obligations of the Contractor (with respect to design or otherwise), and all responsibility related to the Services will be and remain with the Contractor.

**11.0 COMMUNICATION BETWEEN CONTRACTOR AND CITY**

- 11.1 All material communication between the Contractor and the City regarding this Agreement, including performance of the Services, will be between the City’s Project Manager and the Contractor’s Project Manager.

**12.0 TERM OF AGREEMENT**

- 12.1 The Term of this Agreement is as set out in the Service Request.

**13.0 TERMINATION**

- 13.1 The City at any time, in its sole judgment, may, whether or not cause exists, terminate the services of the Contractor in whole or in part by giving 10 calendar days prior written notice (signed by the City’s Project Manager) to the Contractor. If termination is not for cause, the Contractor will be paid at the rate prescribed for all Services properly performed to the date of the delivery of the said notice (subject to the terms of this Agreement) plus all necessary and reasonable wind up costs incurred, if any, in closing out the Services or the part terminated.
- 13.2 Despite Section 13.1, in no event and under no circumstances will the Contractor’s “necessary and reasonable wind up costs incurred” pursuant to Section 13.1 exceed the amount set out in the Service Request.

**14.0 ASSIGNMENT**

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14.1 The Contractor will not assign this Agreement in whole or in part except with the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Any attempt to assign this Agreement without such consent will be void and of no effect. However, the Contractor will be permitted to assign this Agreement to any entity into, by or with which the business or assets of the Contractor have been merged, acquired, consolidated or re-organized, or any entity which purchases all or substantially all of the business or assets of the Contractor, provided always that the Contractor:

14.1.1 first provides the City with reasonable particulars of the transaction (permitting the City to independently verify the nature of the transaction); and

14.1.2 first provides the City with a legally enforceable covenant from the new entity confirming that it is legally bound to the City to perform this Agreement.

**15.0 CONFIDENTIALITY**

15.1 The Contractor acknowledges that in performing the Services required under this Agreement, it will acquire information about certain matters which are confidential to the City, and such information is the exclusive property of the City. The Contractor undertakes to treat as confidential all information received by reason of its position as Contractor, and agrees not to disclose same to any third party either during performance of the Services or after the Services have been rendered under this Agreement.

**16.0 NO PROMOTION OF RELATIONSHIP**

16.1 The Contractor must not disclose or promote its relationship with the City, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the City (except as may be necessary for the Contractor to perform the Contractor's obligations under the terms of this Agreement). The Contractor undertakes not to use "VANOC", "Vancouver 2010", the official emblem, logo or mascot of the 2010 Games or any reference or means of promotion or publicity, without the express prior written consent of the City. Furthermore, the Contractor undertakes not to disclose or promote its relationship with the City in any communication or manner whatsoever as a basis to create an association, express or implied, between the Contractor and the IOC, the Olympics or the Olympic Movement.

**17.0 OWNERSHIP OF DOCUMENTS AND COPYRIGHT**

**17.1 Ownership of Intellectual Property**

(a) All training materials, drawings, audiovisual materials, information, computer systems, software or programs, plans, models, designs, specifications, reports and other documents or products produced, modified, enhanced, developed or implemented by SAP Contractor, its employees and Contractors as a result of the provision of the Services (the "Material") shall be the sole property of the City, and the City shall have the right to utilize all of the Material for its

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benefit in any way it sees fit, subject to SAP Contractor's Intellectual Property Rights.

- (b) All proprietary and intellectual property rights ("SAP Contractor's Intellectual Property Rights") in any SAP Contractor Intellectual Property incorporated or embedded in the Material, or used to provide the Services, will remain the exclusive property of SAP Contractor and/or its licensors. "SAP Contractor Intellectual Property" means
  - (i) all know-how, methodologies, technology, documentation, data files, templates, tools or software (in executable code and source code) or any other materials, information or data developed or owned by or licensed to SAP Contractor prior to the provision of the Services under this Agreement, and
  - (ii) all corrections, improvements and enhancements thereto.
- (c) The Material shall be delivered by SAP Contractor to the City forthwith following the expiration or sooner termination of this Agreement, provided that the City may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to SAP Contractor requesting delivery by SAP Contractor to the City of all or any part of the Material in which event SAP Contractor shall forthwith comply with such request.
- (d) SAP Contractor hereby transfers to the City title in and to any of the Material and assigns to the City sole copyright in the Material and waives, in favour of the City and its Affiliated Organizations only, all moral rights thereto. SAP Contractor agrees that title to the Material is to be considered to have been transferred, and any copyright in the Material is to be considered to have been assigned by SAP Contractor to the City upon creation of the Material. SAP Contractor shall obtain in writing, from its employees and Contractors and from any other source used, all required assignments, waivers, including waivers of moral rights, releases of interest and acknowledgments necessary to transfer title to and copyright in the Material to the City and to waive the moral rights in respect thereof.
- (e) SAP Contractor hereby represents and warrants that the Material will not infringe any patent or copyright or any other industrial or intellectual property rights including trade secrets.

**17.2 Perpetual Enterprise License of SAP Contractor Intellectual Property**

SAP Contractor now grants to the City and each of its Affiliated Organizations a perpetual, fully paid-up, non-exclusive license to use any SAP Contractor Intellectual Property incorporated or embedded in the Material for all purposes for which and in the same manner and to the same extent as the City and its Affiliated Organizations are permitted to utilize the mySAP Software pursuant to the mySAP Software License, but for no other purpose and in no other manner. The City now confirms to SAP Contractor that the mySAP Software License contains certain restrictions on assignment and sublicensing which the City agrees will be binding to the same extent and in the same manner (with all the necessary changes in wording) to the SAP Contractor Intellectual Property. Neither the City nor any of its Affiliated Organizations shall have any right to sublicense the SAP Contractor Intellectual Property or otherwise use same

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to provide, perform or furnish any service that could compete with or be used in lieu of SAP Contractor's services (other than services to the City and its Affiliated Organizations).

**17.3 Confidential and Proprietary Information**

(a) *SAP Contractor's Confidential and Proprietary Information - Defined*

The City now recognizes that for the purposes of this Section 17, "Proprietary Information" means, with respect to SAP Contractor, the SAP Contractor Intellectual Property and related documentation and source code and any complete or partial copies of them in any media, the concepts, techniques, ideas, know-how embodied and expressed in any computer programs or modules included in the SAP Contractor Technology including the structure sequence and organization, and any benchmark or survey results, and any other information reasonably identifiable in writing as the confidential or proprietary information of SAP Contractor.

(b) *City's Confidential and Proprietary Information - Defined*

SAP Contractor now recognizes that for the purposes of this Section 17, "Proprietary Information" means, with respect to the City,

the Material, the mySAP Software and all other City-owned or licensed software or proprietary information including, by way of example only, City-made modifications or extensions, and related documentation, source code and any complete or partial copies of them in any media, the concepts, techniques, ideas, know-how embodied and expressed in any computer programs or modules included in such software including the structure sequence and organization, and any benchmark or survey results,

any and all information obtained by SAP Contractor from the City or its affiliated organizations through the course of carrying out this Agreement, including any compilations of otherwise public information,

any and all information the disclosure of which is restricted by the *Protection of Privacy and Freedom of Information Act*, and

any other information reasonably identifiable in writing as the confidential or proprietary information of the City.

(c) *Restrictions/Limitations on What is Proprietary Information*

For further certainty, "Proprietary Information" excludes any part of such information which:

- (i) is or becomes publicly available through no act or failure of the recipient party, or
- (ii) was or is rightfully acquired by the recipient party from a source other than the disclosing party prior to receipt from the disclosing party, or

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- (iii) becomes independently available to the recipient party as a matter of right (and such right is recorded in writing and is exercisable without any obligation of confidentiality), or
- (iv) is compelled to be disclosed pursuant to law, provided that the party potentially prejudiced by such process is promptly notified by the recipient party and given any available opportunity to obtain a protection order or other remedy against disclosure and that if so compelled, the recipient party being ordered to disclose shall only furnish that portion of the Proprietary Information that it is legally required to furnish.

**17.4 Obligations of Recipient Party**

- (a) SAP Contractor and the City now confirm and agree not to make use or permit any other party to make any use of the Proprietary Information except for the limited purposes contemplated by this Agreement.
- (b) The City and SAP Contractor now agree to limit disclosure of the Proprietary Information to only those of its employees, officers, directors, or third parties, whose access is necessary to carry out the intent of this Agreement. Prior to disclosing any Proprietary Information to any third party, the City and SAP Contractor will obtain from that third party a written acknowledgment that the third party will be bound by this Section 9.4(c) with respect to the Proprietary Information. SAP Contractor and the City will take all reasonable steps and the same protective precautions to protect the other's Proprietary Information from disclosure to third parties as it does with its own proprietary and confidential information provided that the standard of care utilized will not in any case be less than that which would be taken by a reasonable person to safeguard information of like commercial or public interest value.
- (c) *mySAP Software License*

For further certainty, SAP Contractor now confirms that, as an SAP Partner, it has obtained all necessary contractual licenses and permits necessary from SAP Canada Inc. to ensure that the City will not be in breach of the mySAP Software License in making the mySAP Software available to SAP Contractor and its Contractors for the purposes of this Agreement without SAP Contractor and each of its Contractors first signing the Third Party Access Non-Disclosure Agreement (as that term is defined in the mySAP Software License).

**17.5 Surviving Provisions**

Despite the expiry or sooner termination of this Agreement, those terms and conditions which are intended or are in their context capable (whether or not expressly) of operating afterwards will continue in full force and effect. Without limiting the generality of this Section (unless the City elects otherwise), the perpetual license granted by SAP Contractor to the City will not terminate, but will survive the expiry or sooner termination of this Agreement.

**18.0 NOTICES**

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- 18.1 Any notice required or permitted to be given to the Contractor will be sufficiently given if delivered in writing by the City's Project Manager to the Contractor's Project Manager personally or, if mailed, by registered mail to the last known address of the Contractor.
- 18.2 Any notice required or permitted to be given to the City will be sufficiently given if delivered in writing by the Contractor's Project Manager to the City's Project Manager personally or, if mailed, by registered mail to City of Vancouver at 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4 (addressed to the attention of the City's Project Manager).

**19.0 NO CONFLICT OF INTEREST**

- 19.1 The Contractor agrees that during the Term of this Agreement, the Contractor will not engage in any conduct which would or might put the interests of the City into conflict with the interests of any other person, whether or not a client of the Contractor's. Without limiting the general scope of this Section 19.1 and by way of example only, the Contractor is prohibited from and will not provide any services which assist or could be seen to be assisting any person in responding to a Request for Proposal or Tender or otherwise giving that person an unfair competitive advantage over other applicants responding to a Request for Applications or Tender by the City. The Contractor now acknowledges that a breach of this Section 19.1 could constitute not only a breach of this Agreement but also a violation of the *Competition Act (Canada)* and *Criminal Code of Canada*, and accordingly, could be punishable as a crime (as well as a breach of contract).
- 19.2 The Contractor now confirms and warrants that there is no officer, director, shareholder, partner or employee or other person related to the Contractor's organization (a "person having an interest") or any spouse, business associate, friend or relative of a person having an interest who is (a) an elected official or employee of the City or (b) related to or has any business or family relationship with an elected official or employee of the City, such that there would be any conflict of interest or any appearance of a conflict of interest in the administration of this Agreement or the performance of the Services.

**20.0 NON-RESIDENT WITHHOLDING TAX**

- 20.1 The *Income Tax Act (Canada)* requires that payments to persons who are "non-residents" for Canadian tax purposes, for services rendered in Canada, are subject to a non-resident withholding tax. Exemption from this withholding tax is available in some circumstances. The Contractor must make its own inquiries to determine whether or not it qualifies for such an exemption, and if so, what steps must be taken to effect such an exemption. Information can be obtained from the Canada Revenue Agency. If the City considers the Contractor to be a "non-resident" under the *Income Tax Act*, then, in the absence of proof from the Contractor that it is entitled to an exemption, the City may withhold from all fees payable to the Contractor under this Agreement, the amount which the City determines is required to be withheld pursuant to the *Income Tax Act*.

The City will receive full credit under this Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest will be payable by the City on sums withheld, not remitted as aforesaid, and later paid directly to the Contractor.

**REQUEST FOR APPLICATIONS - RFA NO. PS07091**  
**APPENDIX B - PROFESSIONAL SERVICES AGREEMENT**

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**21.0 COMPLIANCE WITH LAW**

- 21.1 The Contractor will comply with the City of Vancouver License By-law and maintain a valid Business License throughout the duration of the Agreement.
- 21.2 The Contractor agrees that it will obey all laws and by-laws whether municipal, provincial or federal.

**22.0 RESOLUTION OF DISPUTES**

- 22.1 This Agreement will be governed by the laws of the Province of British Columbia and the parties now irrevocably agree to submit all disputes to the courts of British Columbia for resolution.

**23.0 INDEPENDENT CONTRACTOR**

- 23.1 This Agreement is a contract for services and the Contractor, its permitted Sub-Contractors, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Contractor and its permitted Sub-Contractors are not, nor are they to be deemed to be, partners, appointees, employees or agents of the City.
- 23.2 The Contractor will not represent to anyone that the Contractor has any authority to bind the City in any way or that the Contractor is an employee of the City.

**24.0 INDEPENDENT LEGAL ADVICE**

- 24.1 The Contractor acknowledges that the Contractor has been advised to seek independent legal advice before executing this Agreement.

**25.0 LEGALLY BINDING AGREEMENT**

- 25.1 This Agreement will benefit and be legally binding on the parties and their successors and permitted assigns (upon the issuance of a Service Request and its acceptance within the required time period).
- 25.2 This is the entire agreement between the Contractor and the City regarding its subject, and it terminates or nullifies any negotiations, other agreements or representations made by or between the Contractor and the City. Any modification of this Agreement must be in writing and executed by both the Contractor and the City.

**REQUEST FOR APPLICATIONS - RFA NO. PS07091**  
**APPENDIX C - APPLICANT'S INFORMATION**

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**1.0 Consultant's Corporate Business Profile**

Provide a description of the Applicant's company, purpose and history of successes including number of years in business, major projects, and what is most responsible for the Applicant's success to date. Include a company brochure for each member of any Consortium as well as each key personnel employed by any named proposed sub-contractor to the Applicant.

**2.0 Consultant's Names and Hourly Rates (include & identify any sub-contractors)**

Identify and provide hourly rates for the key personnel in the Applicant's proposed team.

**3.0 Consultant's Individual Resumes of Experience**

Identify and provide resumes for the key personnel in the Applicant's proposed team and outline what their roles will be in servicing this Project.

Include a list of each at least three (3) relevant and successfully completed projects with references and telephone numbers for each key personnel. By submitting an Application, the Applicant consents to the City contacting these references at its discretion, and consents to the City also contacting any other organization for the purposes of evaluating the Application.



**REQUEST FOR APPLICATIONS - RFA NO. PS07091  
APPENDIX D - SERVICE REQUEST**

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This is the form of Service Request that will be issued to Applicant's who are placed on the Pre-Qualified List and who are then contacted by the SAP Project Manager and requested to provide Service. The requirements stated in this Service Request are as envisioned by the City at the time of writing, but will be modified to suit each individual Service Request.

**1.0 Service Request/Acceptance Signature**

Pursuant to Request for Applications No. PS07091, and the Application submitted in response to same by the following Applicant, the City now requests that the following Applicant provide the following Services:

[Insert Business Name, Address, etc, Here]

The Applicant is required to sign and return this Service Request as set out in this Section 1.0 on or before \_\_\_\_\_, 2007 in order for this Service Request to create a binding agreement between the Applicant and City.

This Service Request has been accepted by the above noted Applicant and will be performed in accordance with its terms (including the terms of Appendix B of the Request for Applications No. PS07091, and all related Contract Documents):

[INSERT APPLICANT'S BUSINESS/CORPORATE NAME HERE]

\_\_\_\_\_  
Name, Title of Authorized Signatory

\_\_\_\_\_  
Date of Acceptance

**2.0 Service Request Scope**

[Scope of Services/Deliverables required for each particular Service Request will be entered here]

List out any other relevant documentation referenced in or attached to your Service Request which describes the requested Services.

**3.0 Project Schedule & Costs**

[Deadlines and Deliverables timing for each particular Service Request will be entered here]

Deliverable	Start Date (est)	End Date (est)	Days (est)	Max Fees (& disburse)
Total				

**REQUEST FOR APPLICATIONS - RFA NO. PS07091  
APPENDIX D - SERVICE REQUEST**

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**4.0 Project Team**

[Individual Consultant Names and Hourly Rates for each particular Service Request will be entered here]

Consultant	Hourly Rate (CDN)
	\$
	\$

**5.0 Evidence of Insurance (Sub-Contractors)**

As per section 8.3 (b) of the Professional Services Agreement:

[Insert Sub-Contractor No. 1]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[Insert Sub-Contractor No. 2]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[Insert Sub-Contractor No. 3]. - \$[\_\_\_\_\_]per claim/\$[\_\_\_\_\_] in aggregate

[THE LIMITS WILL DEPEND ON THE NATURE AND VALUE OF EACH SUB-CONTRACTOR'S WORK, AND THESE LIMITS WILL BE SUBJECT TO REVIEW BY THE CITY'S RISK AND EMERGENCY MANAGEMENT DEPARTMENT.]

**6.0 Communication Between Contractor and City**

6.1 The City appoints \_\_\_\_\_, of the \_\_\_\_\_ Department as the City's Project Manager for the purposes of this Agreement

6.2 The Contractor appoints \_\_\_\_\_, of the \_\_\_\_\_ Department as its representative for the purposes of this Agreement (the "Contractor's Project Manager").

**7.0 Term of Agreement**

The Term of this Agreement will commence on \_\_\_\_\_, 2007 and will expire on \_\_\_\_\_, 2007.

**8.0 Termination**

Despite Section 13.1 of the Professional Services Agreement, in no event and under no circumstances will the Contractor's "necessary and reasonable wind up costs incurred" pursuant to Section 13.1 exceed \_\_\_\_\_.

**REQUEST FOR APPLICATIONS - RFA NO. PS07091**  
**APPENDIX D - SERVICE REQUEST**

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**9.0 Background**

**9.1 General**

The SAP PS and IM modules are being implemented to accommodate the cyclical planning, appropriation, coordination, management, tracking and reporting of investment budgets for both capital and operating programs/projects. Currently, such programs/projects are managed under the SAP CO (Controlling) module. The transition to the PS/IM modules will provide the City with an improved system on which to manage such programs/projects and to produce budgetary and performance reports more effectively and efficiently.

**9.2 Capital Management - Current**

The City develops 3-year Capital Plans, funding of which is derived from borrowing authority approved by plebiscite and by Council for sewer and water projects; a provision from the Operating Budget; Development Cost Levies (DCL) and Community Amenity Contributions (CAC); and other internal and external funding sources. The gross funding for the 2006-2008 amounts to \$743 million. The 3-year Capital Plan forms the framework within which annual capital budgets are prepared. In 2006, gross Capital expenditures amounted to \$168 million. At present, programs/projects that are funded from the Capital Plan could be capital and non-capital in nature.

The City has been using SAP - CO (Controlling) Module to track and report on both capital and operating programs/projects that are funded from the Capital Plan as well as the Operating Budget regardless of complexity, size and duration. The current configuration offers very limited capabilities to manage such programs/projects at multiple levels; to perform financial and performance analysis and reporting on individual and multiple programs/projects; and to support long range financial planning.

With the implementation of PS/IM, the City expects that the enhanced systems capabilities would enable more strategic financial and resource planning and prioritization; budget allocation and monitoring; program/project execution, management, and reporting; cross-program/project analytics; and evaluation of financial and performance measurement at multiple levels. Other expected benefits include consistent application of corporate project management standards and processes to optimize savings and eliminate wastage; establishment of clear program/project structures and responsibility assignment; and provision of early warning signals on project slippage and cost overruns to allow for timely and appropriate management responses.

**10.0 Project Scope**

**10.1 Overview**

The scope of this project is to complete the design, configuration and rollout of the SAP PS and IM modules to support the cyclical planning, appropriation, management, and reporting of investment budgets for capital and operating programs/projects at the City of Vancouver. The configuration of the PS/IM modules, and specifically the settlement rules, must comply with the new tangible assets accounting and reporting requirements outlined by the Public

**REQUEST FOR APPLICATIONS - RFA NO. PS07091**  
**APPENDIX D - SERVICE REQUEST**

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Sector Accounting Board (PSAB) of the Canadian Institute of Chartered Accountants. The settlement rules will be guided by capitalization rules that will be developed concurrently with this project.

Currently, capital and operating programs/projects are managed within the SAP CO module under extensive use of CO orders and order groups. Approximately 13,000 CO orders are currently used to manage such programs/projects. The existing CO structure will be replaced with IM, PS networks, WBS elements and other PS/IM functionality as required. Methodology of transition from CO to PS/IM will be determined during the blueprint phase, and alternatives will be evaluated.

Hansen software is in the process of being implemented to support the capital and maintenance work of the City's Engineering department. Although Engineering will utilize Hansen software to manage their work at the detailed projects level, the higher level rollup of these projects will be represented within the SAP PS module. The appropriate level of program/project hierarchy and financial details to be maintained in SAP PS/IM from an accountability and project management perspective will be determined during the blueprint phase. Basic integration between the two systems will be developed as these projects proceed and is the responsibility of a separate contractor.

Standard and customized PS/IM reports will be developed to address the reporting requirements as defined and prioritized during the blueprint phase. Such reports will encompass both financial and performance management aspects.

## 10.2 Functional Scope

The PS/IM functional scope that is anticipated as part of this implementation includes (but is not necessarily limited to):

- Investment Program Structure to manage program/project budgeting at the highest level;
- Cyclical planning, appropriation, management, and reporting of investment budgets;
- Budget Carry-forward;
- Project structures to replace internal orders and order groups used to track capital and operating programs/projects (including overhead);
- Planning, budgeting, execution of programs/projects;
- Progress analysis and cross-program/project evaluation;
- Period-end closing and settlement;
- What-if scenario;
- Availability control in PS/IM;
- Financial and performance reporting from IM/PS; and
- Redevelopment of custom reports currently used in Internal Order module if comparable reports are not available in IM/PS module; number and type of reports to be determined and prioritized during the blueprint phase.

**REQUEST FOR APPLICATIONS - RFA NO. PS07091**  
**APPENDIX D - SERVICE REQUEST**

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**10.3 Organizational Scope**

The organizational scope of the implementation includes all those City departments that currently manage capital and operating programs/projects. Those departments representing the majority of capital work include Engineering, Park Board, Corporate Services (Facilities Management) and Community Services. Other departments may have incidental use of the system.

**11.0 Timeline**

The anticipated timeline for the SAP PS/IM implementation is as follows (following standard SAP implementation methodology):

Business Blueprint Phase	Apr 30/07 - Jun 29/07
Realization Phase	Jul 3/07 - Oct 26/07
Final Preparation Phase	Oct 29/07 - Nov 30/07
Go Live & Support Phase	Dec 3/07 - Jan 4/08

**12.0 Contractor Responsibilities (Requirements of Contractor)**

12.1 This contract will cover supplemental PS/IM functional consulting services necessary to complete the implementation of the SAP PS and IM modules at the City.

12.2 The City is assigning experienced SAP resources to this project and intends to provide overall project management. The role of the Contractor will be to supplement the implementation team with SAP PS/IM implementation experience. Under the overall direction of the City, the services provided by the Contractor will include:

- Reviewing, analyzing and documenting business processes;
- Providing guidance on the configuration design of the SAP PS/IM modules and integration with other modules;
- Developing business process and Business Process Procedure (BPP) documentation as required;
- Coaching/assisting City staff on the configuration of the SAP PS and IM modules;
- Assisting in the completion of functional team tasks (eg. System configuration, documentation, testing, data conversion) as required;
- Assisting in cutover planning and execution;
- Providing guidance and support to end users;
- Assisting project leaders in ensuring project deliverables meet quality standards.

**APPENDIX E - CERTIFICATE OF INSURANCE**



**CERTIFICATE OF EXISTING INSURANCE  
TO BE COMPLETED AND SUBMITTED ALONG WITH PROPOSAL**

Section 1 - to be completed by City staff  
Section 2, 3, 4, 5, 6, 7 & 8 - to be completed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12<sup>th</sup> Avenue, Vancouver, BC, V5Y 1V4  
Attn \_\_\_\_\_  
Tel (604) \_\_\_\_\_ Fax (604) \_\_\_\_\_  
Email \_\_\_\_\_

*And certifies that the insurance policy (policies) as listed herein has been issued to the Named Insured and is in full force and effect as of the effective date of the agreement described below.*

2. NAMED INSURED  
\_\_\_\_\_  
BUSINESS TRADE NAME or DBA DOING BUSINESS AS

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_  
DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE

3. PROPERTY INSURANCE (All Risks Coverage including Earthquake and Flood)  
INSURER \_\_\_\_\_ Insured Values (Replacement Cost) -  
TYPE OF COVERAGE \_\_\_\_\_ Building and Tenants Improvement \$ \_\_\_\_\_  
POLICY NUMBER \_\_\_\_\_ Contents and Equipment \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ Deductible Per Loss \$ \_\_\_\_\_

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)  
Including the following extensions: INSURER \_\_\_\_\_  
• Personal Injury POLICY NUMBER \_\_\_\_\_  
• Property Damage including Loss of Use POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_  
• Products and Completed Operations Limits of Liability (Bodily Injury and Property Damage Inclusive) -  
• Cross Liability or Severability of Interest Per Occurrence \$ \_\_\_\_\_  
• Employees as Additional Insureds Aggregate \$ \_\_\_\_\_  
• Blanket Contractual Liability All Risk Tenant's Legal Liability \$ \_\_\_\_\_  
• Non-Owned Auto Liability Deductible Per Occurrence \$ \_\_\_\_\_

5. AUTOMOBILE LIABILITY INSURANCE for operation of owned and/or leased vehicles  
INSURER \_\_\_\_\_ Limits of Liability -  
POLICY NUMBER \_\_\_\_\_ Combined Single Limit \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ *If vehicles are insured by ICBC, complete and provide Form APV-47.*

6.  UMBRELLA OR  EXCESS LIABILITY INSURANCE Limits of Liability (Bodily Injury and Property Damage Inclusive) -  
INSURER \_\_\_\_\_ Per Occurrence \$ \_\_\_\_\_  
POLICY NUMBER \_\_\_\_\_ Aggregate \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ Self-Insured Retention \$ \_\_\_\_\_

7. PROFESSIONAL LIABILITY INSURANCE Limits of Liability  
INSURER \_\_\_\_\_ Per Occurrence/Claim \$ \_\_\_\_\_  
POLICY NUMBER \_\_\_\_\_ Aggregate \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ Deductible Per Occurrence/Claim \$ \_\_\_\_\_

*If the policy is in a "Claims Made Form", please specify the applicable Retroactive Date: \_\_\_\_\_*

8. OTHER REQUIRED INSURANCE  
TYPE OF INSURANCE \_\_\_\_\_ Limits of Liability  
INSURER \_\_\_\_\_ Per Occurrence \$ \_\_\_\_\_  
POLICY NUMBER \_\_\_\_\_ Aggregate \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ Deductible Per Loss \$ \_\_\_\_\_

TYPE OF INSURANCE \_\_\_\_\_ Limits of Liability  
INSURER \_\_\_\_\_ Per Occurrence \$ \_\_\_\_\_  
POLICY NUMBER \_\_\_\_\_ Aggregate \$ \_\_\_\_\_  
POLICY PERIOD From \_\_\_\_\_ to \_\_\_\_\_ Deductible Per Loss \$ \_\_\_\_\_

SIGNED BY THE NAMED INSURED (Contractor/Tenant/Lessee/Permittee/Licensee)

\_\_\_\_\_  
SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Dated \_\_\_\_\_

\_\_\_\_\_  
Dated \_\_\_\_\_

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

\_\_\_\_\_